


1260625 - R8 SDMS



EPA Superfund in San Juan County

John H. Wright

to:

Jennifer Lane

10/18/2011 03:51 PM

Cc:

Sabrina Forrest, Group R8Eisc, Howard Cantor

Hide Details

From: "John H. Wright" <wrightjo@frontier.net>

To: Jennifer Lane/R8/USEPA/US@EPA

Cc: Sabrina Forrest/R8/USEPA/US@EPA, Group R8Eisc/OCP/R8/USEPA/US@EPA,
Howard Cantor/R8/USEPA/US@EPA

Ms. Lane,

Our local newspaper, the Silverton Standard and the Miner, listed you as the EPA contact to field community comment on the proposed Superfund site above Gladstone.

In accordance with that direction, I sent the below a month ago. E-mails sometimes go down a black hole, and I've no indication that you in fact received it.

Would you kindly acknowledge receipt of this sending?

Thank you,

John

John H. Wright

1872 Hwy 110

P.O. Box 308

Silverton, CO 81433

Home (970) 387-0257

Cell (970) 764-7439

From: John H. Wright [<mailto:wrightjo@frontier.net>]

Sent: Monday, September 12, 2011 11:19 AM
To: 'lane.jennifer@epa.gov'
Subject: EPA Superfund in San Juan County

Ms Lane,

I am a resident of San Juan County, and have these points to make with regard to EPA establishing a Super Fund site in the upper Cement Creek area above Gladstone:

1. Before consideration proceeds, EPA should declare what it believes is the natural state of contamination of the creek at its confluence with the Animas River, sans man-made contamination. San Juan County Commissioner Kuhlman was correct to raise the question in the recent Animas River Stakeholders meeting which EPA attended in Silverton. He is, of course, referring to the contamination of the creek brought on by natural drainage off the red mountains rimming the basin. The point of the declaration goes to assessing what therefore might be the goals of Superfund activity, and are they reasonable and realistic?
2. EPA should declare at what mile downstream from that confluence the Animas waters presently clean themselves up to the point that it supports aquatic life for native species. Comments from the floor of the meeting in Silverton stated that the Animas water in Durango was "good." The comment was uncontested. Therefore, that mile point exists somewhere between Durango and Silverton. Next, EPA should declare how far upstream that point may move if the Super Fund proposed work is successful. These declarations go to assessing the cost-benefit aspects of the proposed work.
3. EPA should declare what it expects are the scope and costs of the proposed Super Fund activity.
4. EPA should declare what its specific source of funding for the proposed activity will be.
5. Given satisfactory answers to the above points, I would be in a position to declare myself whether I were for, or against Super Fund activity in the described area. At present, I do not have that information and therefore I am against it because the present situation does not seem to represent imminent danger.

During the meeting in Silverton, BLM representatives stated it had done reclamation work on several inactive mines in San Juan County. I am familiar with some of those projects. While BLM in fact did conduct reclamation work, that does not mean it did a good job. In fact I have observed where BLM and State of Colorado work destroyed assets in San Juan County, created new environmental problems, and impending ones. So I am leery of what might be the legacy of EPA Superfund work.

I am concerned about EPA's proposed source of funding, and I want it specifically spelled out as to who pays. I want that beforehand. Who are the "potentially liable parties?" Super Fund history has shown it will hold modern mine claim owners liable for activity of previous mine owner operators. I am deeply disturbed by that kind of muscle. Article 1, Section 9, Paragraph 3 of the US Constitution states Congress shall pass no bill of attainder or ex-post facto law. Seems to me that CERCLA does in fact attain many modern claim owners with the activity of previous claim owners for wrongs that were not at the time illegal. So, as you identify your "potentially liable parties" you should declare why they are not in fact so attainted.

In that very room where we met in Silverton Town Hall recently, but in the year 1984, then attorney Ed Ruland (Dufford, Waldeck, Ruland, et al from Grand Junction, later appellate court judge for the State of Colorado) spoke to a meeting of the Colorado Mining Association on the ramifications of CERCLA. While he did describe it as a particularly "vicious" piece of legislation, he also added a pertinent piece of evidence that relates to the

current discussion, and to Commissioner Kuhlman's cogent question. Ed, at the time, was describing an aspect of a CERCLA action against Federal Resources and the Camp Bird Mine in Ouray County. At issue was the absence of a baseline environmental study in the area. Of course such studies were not required in the yesteryear when the Camp Bird started up. But there was introduced an important piece of evidence from the Journals of Dominguez and Escalante who, in 1776 or thereabouts, passed through what is now known as the Ironton Park area... the other side of the mountain from upper Cement Creek where the current discussion focuses. Quoting from their record, Ruland explained that once reaching Ironton Park, they decamped in short order complaining that "the water is bitter to drink, and there are no fish in it." That is the closest thing to an environmental baseline study that I know of, and it begs EPA to answer what is reasonable and realistic?

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Cell (970) 764-7439



Fw: Mr. Wright's email EPA Superfund in San Juan County
Jennifer Lane to: forrest.sabrina

10/19/2011 08:56 AM

From: Jennifer Lane/R8/USEPA/US
To: forrest.sabrina@epa.gov

Sabrina,

I will email John this morning. I don't recall seeing this previously but it has a similar subject line to the emails received from J. Paul Brown and I'm having a problem with my email in that when I open some emails after being out of the office, many other emails become "unhighlighted" so it appears I have already read them. I'm sorry this slipped as I don't usually miss citizen inquiries. I'll get back to him this morning and apologize and tell him we're preparing a response.

Jennifer

Jennifer H. Lane
Public Affairs Specialist
U.S. Environmental Protection Agency Region 8
1595 Wynkoop St., 80C, Denver, CO 80202-1129
303-312-6813; lane.jennifer@epa.gov

— Forwarded by Jennifer Lane/R8/USEPA/US on 10/19/2011 08:43 AM —

From: "John H. Wright" <wrightjo@frontier.net>
To: Jennifer Lane/R8/USEPA/US@EPA
Cc: Sabrina Forrest/R8/USEPA/US@EPA, Group R8Eisc/OCP/R8/USEPA/US@EPA, Howard Cantor/R8/USEPA/US@EPA
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Mr. John H. Wright
1872 Hwy 110
P.O. Box 308
Silverton, CO 81433

RE: 9-12-11 e-mail "EPA Superfund in
San Juan County

Dear Mr. Wright:

Thank you for your September 12, 2011 email regarding Upper Cement Creek.

Your letter identifies concerns that are commonly raised by communities when the United States Environmental Protection Agency (EPA) is evaluating an area for the National Priorities List (NPL). We'd like to assure you that the EPA has not made a decision concerning listing of the Upper Cement Creek area. The decision to propose a site for the NPL can only be made after a technical evaluation is completed to determine if the site is NPL eligible. The EPA is just completing this technical evaluation. In addition, both the State and the EPA seek community support prior to a site being proposed for listing and the EPA wants the community to understand why we are looking at this option.

More than 15 years ago the EPA committed to a community-based environmental protection effort in San Juan County, and indicated that Superfund would not be used as long as progress was being made in improving water quality in the Animas River. Unfortunately, water quality has significantly degraded in the Animas River in the last five years. It is evident that historic mine waste in Cement Creek, a tributary of the Animas River, is having a negative impact on the Animas. These impacts are likely related to cessation of water treatment in Gladstone and plugging of the American Tunnel. The EPA has compared the last five years of data to earlier data sets that indicated improvements in water quality. The Animas River Stakeholder Group (ARSG) has summarized some of these data and the EPA is also evaluating these data. If experience in other mining impacted areas is any guide, the resources required for solutions to this sort of problem will be substantial, and long-term operation and maintenance of the solution or solutions may be required.

EPA is working with other federal agencies, the State, and local community members to identify options to reverse the degradation and improve water quality in the Animas River. It is too soon to make conclusions about how best to correct this condition. However, if the best solutions require substantial and long-term resources, CERCLA process and the NPL may be the only means to assure that full resources available to the EPA can be committed. EPA is also limited in its ability to fund interim actions and long-term projects that require ongoing operations and maintenance.

The EPA looks forward to continuing the dialogue with you and other community members regarding possible options to address water quality issues in Upper Cement Creek. If you would like to discuss this further, please contact me at 303-312-6607.

Sincerely,

Michael Holmes
Project Manager